

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
SARAH FOGEL, individually and on behalf of :  
all other similarly situated, :  
Plaintiff, :

v. :

ENHANCED RECOVERY COMPANY, LCC, :  
d/b/a ERC, :  
Defendant. :  
-----X

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
**ORDER** DATE FILED: 4-14-22

22 CV 1870 (VB)

On April 13, 2022, defendant filed a motion to dismiss the complaint pursuant to Rule 12(b)(6). (Doc. #10).

Accordingly, it is hereby ORDERED that, by no later than April 25, 2022, plaintiff must notify the Court by letter whether she (i) intends to file an amended complaint in response to the motion to dismiss, or (ii) will rely on the complaint that is the subject of the motion to dismiss.

If plaintiff elects not to file an amended complaint, the motion will proceed in the regular course, and the Court is unlikely to grant plaintiff a further opportunity to amend to address the purported deficiencies made apparent by the fully briefed arguments in defendant's motion. See Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC, 797 F.3d 160, 190 (2d Cir. 2015) (leaving "unaltered the grounds on which denial of leave to amend has long been held proper, such as undue delay, bad faith, dilatory motive, and futility"); accord F5 Capital v. Pappas, 856 F.3d 61, 89–90 (2d Cir. 2017). The time to file opposing and reply papers shall be governed by the Federal Rules of Civil Procedure and the Local Civil Rules, unless otherwise ordered by the Court.

If plaintiff elects to file an amended complaint, she must file the amended complaint by no later than 14 days after notifying the Court of her intent to do so. Within 21 days of such amendment, defendant may either: (i) file an answer to the amended complaint; (ii) file a motion to dismiss the amended complaint; or (iii) notify the Court by letter that it is relying on the initially filed motion to dismiss.

Dated: April 14, 2022  
White Plains, NY

SO ORDERED:



Vincent L. Briccetti  
United States District Judge